

SERVICE DATE - MARCH 12, 2002

SURFACE TRANSPORTATION BOARD

DECISION AND CERTIFICATE OF INTERIM TRAIL USE OR ABANDONMENT

Docket No. AB-39 (Sub-No. 12)

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY—ABANDONMENT
EXEMPTION—IN SMITH AND CHEROKEE COUNTIES, TX

Decided: March 6, 2002

By decision served on December 12, 1988, with findings published the same day in the Federal Register (53 FR 49937), the Interstate Commerce Commission (ICC)¹ granted St. Louis Southwestern Railway Company (SSW)² authority to abandon its 23.56-mile line of railroad known as the Lufkin Branch between milepost 553.0, at or near Gresham, and milepost 576.56, at or near Jacksonville, in Smith and Cherokee Counties, TX, subject to a historic preservation condition requiring that three bridges on the line remain intact and unaltered pending completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f. No offers of financial assistance were filed and, on January 31, 1989, the ICC issued a certificate and decision (C&D) authorizing the railroad to cancel its tariffs and abandon the line. By Certificate of Interim Trail Use or Abandonment (CITU),³ the ICC, at the request of SSW and East Texas Rails to Trails, Inc. (ETRT), modified the C&D served on January 31, 1989, to authorize a 180-day period for SSW and ETRT to negotiate an interim trail use rail banking agreement for the 19-mile portion of the right-of-way between milepost 553.0, near Gresham, and milepost 572.0, near Love's Lookout.⁴

On January 24, 2002, the State of Texas (Texas) petitioned the Board to reopen the proceeding to: (1) waive retroactively the requirement of 49 CFR 1152.29(f)(1), which required that ETRT and Texas jointly give notice to the Board of the transfer of interest and for the Board

¹ The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the ICC and transferred certain functions and proceedings to the Surface Transportation Board.

² SSW is now part of the Union Pacific Railroad Company, but this decision will continue to refer to the carrier as "SSW."

³ See 9 I.C.C.2d 406 (1992).

⁴ ETRT submitted a statement of willingness to assume financial responsibility for interim trail use and rail banking pursuant to the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act) and 49 CFR 1152.29, and acknowledged that the use of the right-of-way as a trail is subject to future reactivation of rail service.

to issue an appropriate replacement CITU to Texas; (2) vacate the CITU served March 27, 1992; and (3) issue a decision authorizing abandonment of the right-of-way between milepost 553.0 and milepost 572.0. According to Texas, ETRT and SSW timely reached an interim trail use/rail banking agreement pursuant to the Trails Act for the right-of-way between milepost 553.0 and milepost 572.0.⁵ Texas states that ETRT's interest in the right-of-way was conveyed to Texas in 1997, and Texas assumed the financial responsibility of the involved right-of-way as of the date of its acquisition of ETRT's interests. Texas further states that the March 27, 1992 CITU explained that if "interim trail use is implemented and the user subsequently seeks to terminate trail use, it must file a petition to reopen, referring to this decision and CITU by date and docket number, and request that the CITU be vacated on a specified date."

Where, as here, ETRT and Texas failed to notify the Board that the parties had entered into an agreement to transfer the subject property to Texas, and where Texas assumed the financial responsibility of the right-of-way, there is no need to waive the requirements of 49 CFR 1152.29(f)(1). Under the circumstances, Texas will be authorized at this time to replace ETRT as the new trail user over the involved right-of-way.

Texas has complied with the requirements of 49 CFR 1152.29(d)(2) regarding a request to vacate the CITU. Whenever a trail manager intends to terminate trail use over a portion of the right-of-way and sends the Board a request that a CITU be vacated, the Board will reopen the proceeding, vacate the CITU, and issue a decision reinstating the abandonment authorization for that portion of the right-of-way. Therefore, Texas' request to vacate the CITU will be granted with respect to that portion of the right-of-way between 553.0 and milepost 572.0, and SSW will be permitted to fully abandon that portion of the right-of-way.

This decision will not significantly affect either the quality of the human environment or conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Texas is authorized to replace ETRT as the new trail user over the involved right-of-way, effective on the service date of this decision.

⁵ Texas notes that ETRT acquired the fee simple title to all but a limited portion of the involved right-of-way and that the 1992 transfer specifically stated that the conveyance is subject to the terms of the Trails Act.

3. The CITU served March 27, 1992, is vacated with respect to that portion of the right-of-way between milepost 553.0 and milepost 572.0, and that portion of the line may be abandoned.⁶

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

⁶ SSW may also abandon the remaining 4.56 miles of rail line between milepost 572.0 and milepost 576.56 because that part of the line was authorized for abandonment, subject to the historic preservation condition that was imposed in the December 12, 1988 decision.